

Client Alert

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Pressing Pause: Now That Coronavirus Is a Factor in Staying One Patent Litigation, Will Other Cases Follow?

The coronavirus pandemic has disrupted many aspects of society, and legal proceedings are no exception. A recent decision citing the pandemic as a factor in staying a patent litigation may set a significant precedent for civil litigations generally.

As background, DivX, LLC filed two similar patent infringement complaints against Hulu and Netflix in March 2019 in the Central District of California (C.D. Cal.).¹ The district court assigned both cases the same procedural schedule, setting a common claim construction hearing in August 2020, fact discovery cut-off in September 2020, and trial in April 2021.

Hulu and Netflix each filed petitions for *inter partes* reviews (IPRs) of the asserted patents with the United States Patent and Trademark Office (USPTO), challenging patent validity, and also filed motions to stay the infringement litigations pending the outcome of the IPRs.

On May 11, 2020, the district court granted these motions.²

Motions to stay patent litigation in view of IPRs are common, and often granted because the asserted patents might be struck down as invalid by the USPTO. Courts, including the C.D. Cal., weigh several factors to decide whether a stay is warranted, which relate to: (1) whether discovery is complete and a trial date has been set; (2) whether a stay will simplify the issues and trial; and (3) whether a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party.

Notably, the district court here specifically cited the coronavirus pandemic as a relevant consideration under the first factor.³ The district court held it was likely that, if the cases were to proceed on their current schedule, hearings and trial would be subject to delays. The court also noted that criminal matters would take priority over these patent litigations.

While this decision is only one ruling from one district court, if widely adopted this precedent could be significant for patent cases generally—and civil litigation more broadly.

Federal courts across the country have been impacted by COVID-19, and it is difficult to imagine that any pending litigation has not been delayed or otherwise interrupted. Likewise, all federal courts have criminal dockets that could be given priority over civil litigation.

As the pandemic continues, its effects may be more frequently cited by parties seeking stays of litigation where the stage of the case and its progress are factors. In view of the logistical and scheduling difficulties currently facing federal courts, judges may become more amenable to this argument and to granting stays of patent cases or other civil litigations.

¹ *DivX, LLC v. Hulu, LLC*, Case No. 2:19-cv-1606 PSG (DFMx) (C.D. Cal.); *DivX, LLC v. Netflix, Inc.*, Case No. 2:19-cv-1602 PSG (DFMx) (C.D. Cal.).

² *DivX v. Hulu*, Docket No. 122; *DivX v. Netflix*, Docket No. 106.

³ Hulu and Netflix argued that the pandemic made it more difficult to meet case deadlines and, in opposition to the motions, DivX acknowledged the “unprecedented challenges from COVID-19” facing the court, the parties and their counsel, along with “the corresponding guidance and restrictions that have disrupted everyday life and routines.”

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